IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 257 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUKALIBEN,D/O.RAMUBHAI BAPUBHAI PAMAR - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HEMANT K MAKWANA for Applicant(s) : 1,
MR.A.J. DESAI, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR RR VAKIL for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 26/09/2006

ORAL JUDGMENT

The petitioner-wife Sukaliben, daughter of Ramubhai Parmar is before this Court. She is aggrieved by order dated 16th February 2006 passed by

the learned Additional Sessions Judge & Presiding Officer, 2nd Fast Track Court, Dahod. The learned Judge was pleased to allow Criminal Revision Application No.79 of 2005 and was pleased to quash the judgement and order passed in Criminal Case No.30 of 2002 dated 15th October 2005 passed by the learned Additional Civil Judge & JMFC, Dahod.

2. If is often said that facts are stranger than fiction. This is one such case to which this saying applies in all force.

3. It is the case of the petitioner herein that she is illiterate. She does not know any vocation. She has no source of income. She goes for labour work and if she gets one she earns about Rs.40/- per day. She has filed application for getting maintenance. She is residing at her parent's house. She is examined at exh.18. In her deposition it comes out that her marriage had taken place 25 years ago. She then improved her version and said that, 'her marriage had taken place 16-17 years ago'. Out of the wedlock with respondent no.2 she had two

children; son, Raju, who is stated to be aged 7 years and daughter-Sangeeta, who is stated to be 17 (seventeen) year old. It is further stated that both the children are residing with her. As she was not liked by the respondent no.2, he contracted another marriage and drove her away. He did not come to take her back. The Panch was gathered and she was sent back to the place of respondent no.2. Again respondent no.2 drove her away. It is stated that, 'five months prior to the filing of the application she was driven away'. It is also stated that respondent no.2 is serving in Gujarat State Road Transport Corporation and is having monthly salary of Rs.10,000/-, and he is having some agricultural land from which he derives income of Rs.10,000/-, he is also having milching animals, but no income is derived by selling milk.

4. It is important to note that in cross examination the case put forward in the chief cold not withstand the test of trustworthiness. In the cross examination, it is stated that the marriage had taken placed 16-17 years ago. After about a year or

so, she was driven away. Since then she is staying with her parents. After she was driven away, Village Panch was gathered and it was decided that a lump sum amount be paid and **that was paid and accepted** by the petitioner-wife. She has denied that any writing was executed.

5. What follows is important, she has admitted that respondent no.2 contracted second marriage about 25 years ago. If her marriage had taken place 16-17 years ago; after a year or so if she was driven away, where is the question of contracting second marriage 20 years ago. This renders the witness to be totally unreliable. The only inevitable inference which could be drawn is that the petitioner is out to harass respondent no.2 by filing an application, which is not worth entertaining by the court of law. Even when there is 'no period of limitation prescribed' for filing an application one is not expected to file such frivolous application. Even if the deposition and cross of the petitioner is liberally construed and considered, it is not possible to reconcile the averments made in the chief

and the admissions made in the cross examination.

She has admitted that out of the second marriage, respondent no.2 has three children, that her daughter, named, Sangeeta is married and she is aged 20 years.

6. The learned JMFC without appreciating the evidence in its true perspective allowed the application and awarded Rs.400/- by way of maintenance from the date of application.

7. Revision Application was filed before the learned Additional Sessions Judge which was heard and decided. In para 6.3 the learned Judge has given cogent reasons for allowing the Revision Application and quashing the order passed by the learned JMFC.

The learned Additional Sessions Judge has recorded that the marriage between the parties has ended 20 years ago, in the presence of Panchas of the Village. These Panchas were also examined and their evidence is on record. It is rightly observed by the learned

Additional Sessions Judge that there is no reason for which the evidence of these Panchas should not be believed. It is also on record, as is recorded by the learned Additional Sessions Judge that customary divorce had taken place on payment of lump sum amount, that too 20 years ago. Now at this stage to insist for that writing to be produced, particularly in light of the fact that after divorce respondent no.2 contracted second marriage, out of that second marriage he is having three children is unreasonable. To expect somebody to maintain the so called writing for such a long is too much. Therefore, the learned Additional Sessions Judge has rightly said that only because that writing is not coming on record, is not sufficient to disbelieve the evidence which has come on record.

8. Despite strenuous attempt made by the learned advocate for the petitioner he could not point out any reason to interfere with the order passed by the learned Additional Sessions Judge. In the result, this Criminal Revision Application fails and is dismissed.

(RAVI R. TRIPATHI, J.)

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